



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

KENNETH EDWARD STEFANSKI,	§	
Petitioner,	§	
	§	
vs.	§	CIVIL ACTION 8:18-2736-MGL
	§	
WARDEN JOYNER,	§	
Respondent.	§	

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
AND DISMISSING THE PETITION WITHOUT PREJUDICE
AND WITHOUT REQUIRING RESPONDENT TO FILE AN ANSWER OR RETURN**

Petitioner Kenneth Edwards Stefanski (Stefanski), who is self represented, filed this as a 28 U.S.C. § 2241 petition. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the petition be dismissed without prejudice and without requiring Respondent Warden Joyner to file an answer or return. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 22, 2018; and the Clerk filed Stefanski's objections on October 31, 2018. The Court has reviewed the objections, but holds them to be without merit. It will therefore enter judgment accordingly.

As the Magistrate Judge correctly observed, Stefanski "is not challenging the legality or duration of his custody. Further, he is not entitled to any relief under § 2241 because he is not challenging the execution of his sentence, such as the administration of parole, sentence computation by prison officials, or prison disciplinary actions." Report 3-4 (citation omitted) (internal quotation marks omitted). "Instead, [he] seeks to challenge the conditions of his confinement, which he must do in an action filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971)." *Id.* at 4 (footnote omitted). His objections to the contrary are without merit.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Stefanski's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court the petition is **DISMISSED WITHOUT PREJUDICE** and without requiring Joyner to file a return.

The Court dismisses the petition without prejudice to Stefanski's right to file a *Bivens* action relating to his claims. Accordingly, the Court directs the Clerk to mail to Stefanski the appropriate forms in the event he decides to file a *Bivens* action.

IT IS SO ORDERED.

Signed this 29th day of November, 2018, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.